

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Draft Rule LSA Document #11-454

DIGEST

Adds 329 IAC 10-39-12, 329 IAC 10-39-13, 329 IAC 10-39-14, 329 IAC 10-39-15, 329 IAC 10-39-16, 329 IAC 10-39-17, 329 IAC 10-39-18 to include financial assurance instrument forms into the rule; and amends 329 IAC 10-12-2 to correct code citations, 329 IAC 10-39-1, 329 IAC 10-39-2, 329 IAC 10-39-3, 329 IAC 10-39-10, 329 IAC 10-39-11 to update the solid waste financial assurance rules. Effective 30 days after filing with the Publisher.

HISTORY

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**329 IAC 10-12-2; 329 IAC 10-39-1; 329 IAC 10-39-2; 329 IAC 10-39-3; 329 IAC 10-39-10;
329 IAC 10-39-11; 329 IAC 10-39-12; 329 IAC 10-39-13; 329 IAC 10-39-14; 329 IAC
10-39-15; 329 IAC 10-39-16; 329 IAC 10-39-17; 329 IAC 10-39-18.**

SECTION 1. 329 IAC 10-12-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-12-2 Application review

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-15-4; IC 13-18; IC 13-20-8; IC 36-9-30

Sec. 2. (a) Time periods for determination on permit application are under ~~IC 13-15-8~~. **IC 13-15-4.**

(b) Procedures for application review are under ~~IC 13-15-8~~. **IC 13-15-4.**

(c) Remedies are under ~~IC 13-15-8~~. **IC 13-15-4.** (*Solid Waste Management Board; 329 IAC 10-12-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1813; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2757*)

SECTION 2. 329 IAC 10-39-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) This rule applies to all solid waste land disposal facilities that:

(1) are required to have a permit by 329 IAC 10-11-1; and

(2) apply for a permit after April 13, 1996, or have an operating permit in effect on April 13, 1996.

(b) The permittee for solid waste land disposal facilities regulated by this rule shall provide financial responsibility for closure and post-closure in accordance with the following:

(1) Closure and post-closure rules, including:

(A) 329 IAC 10-22 and 329 IAC 10-23;

(B) 329 IAC 10-30 and 329 IAC 10-31; or

(C) 329 IAC 10-37 and 329 IAC 10-38.

(2) Sections 2 through 5 of this rule.

(c) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless ~~they~~ **the permittees** have established financial responsibility for post-closure by choosing a financial assurance mechanism under section 3(a) of this rule and by funding the same under section 3(b) of this rule.

(d) Solid waste land disposal facilities that have operating permits in effect must not continue to operate unless ~~they~~ **the permittees** have established financial responsibility for closure by choosing a financial assurance mechanism under section 2(a) of this rule and by funding the same under section 2(b) of this rule.

(e) Solid waste land disposal facilities that apply for permits after April 13, 1996, must provide financial responsibility as required by 329 IAC 10-11-2.5(a)(4). The documents establishing both the closure and post-closure financial responsibility must be executed by and approved by the commissioner prior to operation of the facility. In addition, the financial assurance mechanism must be funded under sections 2(b) and 3(b) of this rule prior to operation.

(f) The requirements of this section apply to permittees of all solid waste land disposal facilities except permittees who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. (Solid Waste Management Board; 329 IAC 10-39-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1918; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004)

SECTION 3. 329 IAC 10-39-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-2 Closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 8-1-2-1; IC 13-20; IC 36-9-30

Sec. 2. (a) The permittee shall establish financial responsibility for closure of all the permitted acreage for the solid waste land disposal facility before waste placement, except as provided in subsection (b). The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee may satisfy the requirements of this section by establishing a trust agreement ~~on~~ **as follows:**

~~(i) forms provided by the commissioner; or~~

~~(ii) other forms approved by the commissioner.~~

(i) Make the wording of the trust agreement identical to the wording specified in section 12(a) of this rule.

(ii) Accompany the trust agreement with a formal certification of acknowledgment as specified in section 12(b) and 12(c) of this rule.

(iii) Submit an original signed copy and a duplicate copy of the trust agreement to the commissioner.

(B) All trust agreements must contain the following:

(i) Identification of solid waste land disposal facilities and corresponding closure cost estimates covered by the trust agreement.

(ii) The establishment of a trust fund in the amount determined by subsection (b) and guarantee payments from that fund either:

(AA) reimbursing the permittee for commissioner-approved closure work done; or

(BB) making payments to the commissioner for accomplishing required closure work.

(iii) The requirement of annual evaluations of the trust to be submitted to the commissioner.

(iv) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days before the appointment becoming effective.

(v) The requirement of the trustee to notify the commissioner, in writing, of the failure of the permittee to make a required payment into the fund.

(vi) The establishment that the trust is irrevocable unless terminated, in writing, with the approval of the:

(AA) permittee;

(BB) trustee; and

(CC) commissioner.

(vii) A certification that the signatory of the trust agreement for the permittee was duly authorized to bind the permittee.

(viii) A notarization of all signatures by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.

(ix) The establishment that the trustee is:

(AA) authorized to act as a trustee; and

(BB) an entity whose operations are regulated and examined by a federal and state of Indiana agency.

(x) The requirement of:

(AA) initial payment into the fund be made within thirty (30) days of the commissioner's approval of the trust agreement; and

(BB) any subsequent payments be made annually not later than June 15.

(2) The surety bond option, including the following:

(A) The permittee may satisfy the requirements of this section by establishing a surety bond ~~on~~ **as follows:**

~~(i) forms provided by the commissioner; or~~

~~(ii) other forms approved by the commissioner.~~

- (i) **Choose from one (1) of the following types of surety bonds:**
 - (AA) **A financial guarantee surety bond.**
 - (BB) **A performance surety bond.**
 - (ii) **Make the wording of the surety bond identical to the wording specified in the following:**
 - (AA) **Section 13 of this rule for a financial guarantee surety bond.**
 - (BB) **Section 14 of this rule for a performance surety bond.**
 - (iii) **Submit an original signed copy and a duplicate of the surety bond to the commissioner.**
- (B) All surety bonds must contain the following:
- (i) The establishment of penal sums in the amount determined by subsection (b).
 - (ii) Provision that the surety:
 - (AA) will be liable to fulfill the permittee's closure obligations upon notice from the commissioner that the permittee has failed to do so; and
 - (BB) may not cancel the bond without first sending notice of cancellation by certified mail to the permittee and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.
 - (iii) Provision that the permittee may not terminate the bond without prior written authorization by the commissioner.
- (C) The permittee shall establish a standby trust fund to be utilized in the event the:
- (i) permittee fails to fulfill closure obligations; and
 - (ii) bond guarantee is exercised.
- The **standby** trust fund must be established in accordance with the requirements of subdivision (1). **Under the terms of the bond, all payments made if the bond is utilized must be deposited by the surety directly into the standby trust fund in accordance with instructions from the commissioner.**
- (D) The surety company issuing the bond must be:
- (i) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and
 - (ii) authorized to do business in Indiana.
- (E) The surety will not be liable for deficiencies in the performance of closure by the permittee after the commissioner releases the permittee in accordance with section 6 of this rule.
- (3) The letter-of-credit option, including the following:
- (A) The permittee may satisfy the requirements of this section by establishing a letter-of-credit ~~on~~ **as follows:**
 - ~~(i) forms provided by the commissioner; or~~
 - ~~(ii) other forms approved by the commissioner.~~
 - (i) **Make the wording of the letter-of-credit identical to the wording specified in section 15 of this rule.**
 - (ii) **Submit an original signed copy and a duplicate of the**

letter-of-credit to the commissioner.

(B) All letters of credit must contain the following:

- (i) The establishment of credit in the amount determined by subsection (b).
- (ii) Irrevocability.
- (iii) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the permittee and the commissioner at least one hundred twenty (120) days before the effective date of cancellation.
- (iv) Provision that, upon written notice from the commissioner, the institution issuing the letter-of-credit will:

(AA) state that the permittee's obligations have not been fulfilled; and

(BB) deposit funds equal to the amount of the letter-of-credit into a **standby** trust fund to be used to ensure the permittee's closure obligations are fulfilled.

(C) The permittee shall establish a standby trust fund to be utilized in the event the:

- (i) permittee fails to fulfill its closure obligations; and
- (ii) letter-of-credit is utilized.

The **standby** trust funds must be established in accordance with the requirements of subdivision (1). **Under the terms of the letter-of-credit, all amounts paid pursuant to a commissioner's request in the event the permittee fails to fulfill its closure obligations must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner.**

(D) The issuing institution must be an entity:

- (i) that has the authority to issue letters of credit; and
- (ii) whose letters of credit operations are regulated and examined by a federal or Indiana agency.

(4) The insurance option, including the following:

(A) The permittee may satisfy the requirements of this section by providing evidence of insurance ~~on: as follows:~~

- ~~(i) forms provided by the commissioner; or~~
- ~~(ii) other forms approved by the commissioner.~~

(i) Make the wording of the certificate of insurance identical to the wording specified in section 16 of this rule.

(ii) Submit a certificate of closure insurance to the commissioner.

(B) All insurance must include the following requirements:

- (i) Be in the amount determined by subsection (b).
- (ii) Provide that, upon written notification to the insurer by the commissioner that the permittee has failed to perform final closure, the insurer shall make payments:
 - (AA) in any amount, not to exceed the amount insured; and
 - (BB) to any person authorized by the commissioner.
- (iii) Provide that the permittee shall maintain the policy in full force and

effect unless the commissioner consents in writing to termination of the policy.

(iv) Provide for assignment of the policy to a transferee permittee.

(v) Provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure of the permittee to pay the premium. No policy may:

- (AA) be canceled;
- (BB) be terminated; or
- (CC) fail to be renewed;

unless at least one hundred twenty (120) days before the event the commissioner and the permittee are notified by the insurer in writing.

(C) The insurer shall either be:

- (i) licensed to transact the business of insurance; or
- (ii) eligible to provide insurance as an excess or surplus lines insurer;

in one (1) or more states.

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites: **that are permitted to accept restricted waste criteria Type I, II, and III. The permittee must meet the requirements of:**

- (i) clause (B) of this subdivision; or**
- (ii) clause (B)(i) and either clause (B)(ii) or (B)(iii) of this subdivision if the permittee:**

(AA) Is a public utility operating in Indiana subject to the jurisdiction of the Indiana Utility Regulatory Commission pursuant to IC 8-1-2;

(BB) Remits annual financial information to the Commission pursuant to IC 8-1-2-16; and

(CC) The remitted financial information is subject to examination and audit by the Commission pursuant to IC 8-1-2-17 and IC 8-1-2-18;

to be deemed to have established financial responsibility.

~~(B) If a permittee meets the criteria set forth in item (i) and either item (ii) or (iii), the permittee shall be deemed to have established financial responsibility as follows:~~

(B) The following criteria will be used to establish financial responsibility:

(i) Less than fifty percent (50%) of the company's gross revenues are derived from waste management.

(ii) The permittee meets the following four (4) tests:

(AA) Two (2) of the following three (3) ratios are met:

(aa) A ratio of total liabilities to net worth less than two (2.0).

(bb) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1).

(cc) A ratio of current assets to current liabilities greater than

one and one-half (1.5).

(BB) Net working capital and Tangible net worth each at least six (6) times the sum of the current closure and current post-closure cost estimates.

(CC) Tangible net worth of at least ten million dollars (\$10,000,000).

(DD) Assets **located** in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure costs estimates.

(iii) The permittee meets the following four (4) tests:

(AA) A current rating for the permittee's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's.

(BB) Tangible net worth of at least six (6) times the sum of the current closure and current post-closure cost estimates.

(CC) Tangible net worth of at least ten million dollars (\$10,000,000).

(DD) Assets located in the United States amounting to at least ninety percent (90%) of the permittee's total assets or at least six (6) times the sum of the current closure and current post-closure estimates.

(C) To demonstrate the financial test has been met, the permittee shall submit the following documents to the commissioner:

~~(i) A form provided by the commissioner or other form approved by the commissioner, signed by the permittee's chief financial officer, demonstrating the applicable criteria have been met.~~

(i) A letter signed the permittee's chief financial officer, demonstrating the applicable criteria have been met. The letter from the chief financial officer must be worded as specified in section 17 of this rule.

(ii) A copy of an independent certified public accountant's report examining the permittee's financial statements for the latest completed fiscal year.

(iii) A special report from the permittee's independent certified public accountant to the permittee stating the following:

(AA) The certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements.

(BB) In connection with that procedure, no matters came to the attention of the certified public accountant that caused the certified public accountant to believe that the specified data should be adjusted.

(D) The permittee shall submit updated clause (C) documents to the commissioner within ninety (90) days after the close of each fiscal year.

(E) If at any time the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the year-end financial data shows that the permittee no longer meets the requirements.

(F) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the independent certified public accountant's report examining the permittee's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, they indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within thirty (30) days after notification of the disallowance.

(G) If a permittee using clause (B)(iii) of this subdivision for the financial test has a current bond rating of BBB- as issued by Standard and Poor's or Baa3 as issued by Moody's for the permittee's most recent bond issuance, the commissioner may request that permittee submit the following information to the department on a quarterly basis until the bond rating is upgraded:

(i) The current bond rating of the most recent issuance.

(ii) Name of the rating service.

(iii) Date of issuance of the bond.

(iv) Date of maturity of the bond.

(v) Last credit rating action.

(vi) Explain any events such as a decrease in the bond ratings, as well as inclusion on a negative credit watch list.

This quarterly update will supplement the annual financial update specified in clause (C) of this subdivision. The department will review and verify the submitted information to ensure that it is up-to-date and accurate. On the basis on the submitted information, if the commissioner finds that the permittee no longer meets the restricted waste financial test requirements, the permittee shall provide alternate financial assurance in accordance with this rule.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) A local government permittee that satisfies the following requirements may demonstrate financial assurance up to the amount specified in clause (C):

(i) The local government permittee shall meet the following financial component requirements:

(AA) The local government permittee shall satisfy ~~either~~ of the following as applicable:

(aa) If the local government permittee has outstanding, rated general obligation bonds that are not secured by insurance, a letter-of-credit, or other collateral or guarantee, the local government permittee shall have a current rating of:

- (1) Aaa, Aa, A, or Baa as issued by Moody's; or
- (2) AAA, AA, A, or BBB as issued by Standard and Poor's;

on all the general obligation bonds.

(bb) The local government permittee shall satisfy the following financial ratios based on the local government permittee's most recent audited annual financial statement:

(1) A ratio of cash plus marketable securities to total expenditures greater than or equal to five-hundredths (0.05).

(2) A ratio of annual debt service to total expenditures less than or equal to two-tenths (0.20).

(BB) The local government permittee shall:

(aa) prepare the local government permittee's financial statements in conformity with generally accepted accounting principles (GAAP) for governments; and

(bb) have the financial statements audited by an independent certified public accountant or the state board of accounts.

(CC) A local government permittee is not eligible to assure the local government permittee's obligations under this subdivision if any of the following applies to the local government permittee:

(aa) The local government permittee is currently in default on any outstanding general obligation bonds.

(bb) The local government permittee has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(cc) The local government permittee has operated at a deficit equal to five percent (5%) or more of total annual revenue in each of the past two (2) fiscal years.

(dd) The local government permittee receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the state board of accounts auditing its financial statement as required under subitem (BB). The commissioner may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the commissioner deems the qualification insufficient to warrant disallowance of use of the test.

(DD) As used in this subdivision, the following terms apply:

(aa) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government permittee on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations, such as pensions.

(bb) "Debt service" means the amount of principal and

interest due on a loan in a given time period, typically the current year.

(cc) "Deficit" means total annual revenues minus total annual expenditures.

(dd) "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

(ee) "Total revenues" means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenues from funds managed by the local government permittee on behalf of a specific third party.

(EE) If the permittee using the local government financial test has a current bond rating of BBB- as issued by Standard and Poor's or Baa3 as issued by Moody's for the permittee's most recent bond issuance, the commissioner may request that permittee submit the following information to the department on a quarterly basis until the bond rating is upgraded:

(aa) The current bond rating of the most recent issuance.

(bb) Name of the rating service.

(cc) Date of issuance of the bond.

(dd) Date of maturity of the bond.

(ee) Last credit rating action.

(ff) Explain any events such as decrease in the bond ratings, as well as inclusion on a negative credit watch list.

This quarterly update will supplement the record keeping and report requirements specified in item (iii) of this clause. The department will review and verify the submitted information to ensure that it is up-to-date and accurate. On the basis on the submitted information, if the commissioner finds that the permittee no longer meets the local government financial test requirements, the permittee shall provide alternate financial assurance in accordance with this rule.

(ii) The local government permittee shall meet the following public notice component requirements:

(AA) The local government permittee shall place a reference to the closure and post-closure care costs assured through the financial test into the local government permittee's next comprehensive annual financial report (CAFR) at the time of the next required local government financial test annual submittal or before the initial receipt of waste at the facility, whichever is later. Disclosure must include the following:

(aa) Nature and source of closure and post-closure care requirements.

(bb) Reported liability at the balance sheet date.

(cc) Estimated total closure and post-closure care cost

- remaining to be recognized.
- (dd) Percentage of landfill capacity used to date.
- (ee) Estimated landfill life in years.
- (BB) A reference to corrective action costs must be placed in the CAFR not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.
- (CC) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.
- (DD) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.
- (iii) The local government permittee shall meet the following record keeping and reporting requirements:
 - (AA) The local government permittee shall place the following items in the facility's operating record:
 - (aa) A letter signed by the local government permittee's chief financial officer that completes the following:
 - (1) Lists all of the current cost estimates covered by a financial test as described in clause (C).
 - (2) Provides evidence and certifies that the local government permittee meets the conditions of item (i)(AA) through (i)(CC).
 - (3) Certifies that the local government permittee meets the conditions of item (ii) and clause (C).
 - (bb) The local government permittee's independently audited year-end financial statements for the latest fiscal year (except for local government permittees where audits are required every two (2) years when unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who shall be an independent certified public accountant, or the state board of accounts that conducts equivalent comprehensive audits.
 - (cc) A report to the local government permittee from the local government permittee's independent certified public accountant or the state board of accounts based on performing an agreed upon procedures engagement relative to the:
 - (1) financial ratios required by item (i)(AA)(bb), if applicable; and
 - (2) requirements of item (i)(BB), (i)(CC)(cc), and

(i)(CC)(dd).

The independent certified public accountant's or state board of accounts' report must state the procedures performed and the findings.

(dd) A copy of the CAFR used to comply with item (ii) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(BB) The items required in subitem (AA) must be placed in the facility operating record as follows:

(aa) In the case of closure and post-closure care, either at the time of the next required local government financial test annual submittal or before the initial receipt of waste at the facility, whichever is later.

(bb) In the case of corrective action, not later than one hundred twenty (120) days after the corrective action remedy is selected in accordance with the requirements of 329 IAC 10-21-13.

(CC) After the initial placement of the items in the facility's operating record, the local government permittee shall:

(aa) update the information; and

(bb) place the updated information in the operating record; within one hundred eighty (180) days following the close of the local government permittee's fiscal year.

(DD) The local government permittee is no longer required to meet the requirements of this item when either the local government permittee:

(aa) substitutes alternate financial assurance as specified in this rule; or

(bb) is released from the requirements of this rule in accordance with section 6 or 11 of this rule.

(EE) A local government permittee shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall, within one hundred twenty (120) days following the close of the local government permittee's fiscal year, complete the following:

(aa) Obtain alternative financial assurance that meets the requirements of this rule.

(bb) Place the required submissions for that assurance in the facility's operating record.

(cc) Notify the commissioner that the local government permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(FF) The commissioner, based on a reasonable belief that the local government permittee may no longer meet the requirements of the

local government financial test, may require additional reports of financial condition from the local government permittee at any time. If the commissioner finds, on the basis of the reports or other information, that the local government permittee no longer meets the requirements of the local government financial test, the local government permittee shall provide alternate financial assurance in accordance with this rule.

(GG) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the local government permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the local government permittee does not meet the requirements of this subdivision. The local government permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(C) The local government permittee shall complete the calculation of costs to be assured. The portion of the closure, post-closure, and corrective action costs for which a local government permittee can assure under this subdivision is determined as follows:

(i) If the local government permittee does not assure other environmental obligations through a financial test, the local government permittee may assure closure, post-closure, and corrective action costs that equal up to forty-three percent (43%) of the local government permittee's total annual revenue.

(ii) If the local government permittee assures other environmental obligations through a financial test, including those associated with:

(AA) underground injection control (UIC) facilities under 40 CFR 144.62;

(BB) petroleum underground storage tank facilities under 329 IAC 9-8;

(CC) polychlorinated biphenyls (PCB) storage facilities under 40 CFR 761; and

(DD) hazardous waste treatment, storage, and disposal facilities under 329 IAC 3.1-14 or 329 IAC 3.1-15;

the local government permittee shall add those costs to the closure, post-closure, and corrective action costs the local government permittee seeks to assure under this subdivision. The total that may be assured must not exceed forty-three percent (43%) of the local government permittee's total annual revenue.

(iii) The local government permittee shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in this clause.

(7) The local government guarantee option, including the following:

(A) A permittee may demonstrate financial assurance for closure, post-closure, and

corrective action, as required by sections 2, 3, and 10 of this rule, ~~by obtaining as follows:~~

- (i) Obtain** a written guarantee provided by a local government.
- (ii) Make the wording of the written guarantee identical to the wording in section 18 of this rule.**
- (iii) Submit an original signed copy and a duplicate of the written guarantee to the commissioner.**

(B) The guarantor shall meet the requirements of the local government financial test in subdivision (6) and shall comply with the terms of a written guarantee as follows:

- (i) The guarantee must be effective:
 - (AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or
 - (BB) not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with the requirements of 329 IAC 10-21-13.
- (ii) The guarantee must provide the following:
 - (AA) If the permittee fails to perform any combination of closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor shall:
 - (aa) perform or pay a third party to perform any combination of closure, post-closure care, or corrective action as required under this subitem; or
 - (bb) establish a fully funded trust fund as specified in subdivision (1) in the name of the permittee.
 - (BB) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the commissioner. Cancellation must not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the permittee and the commissioner as evidenced by the return receipts.
 - (CC) If a guarantee is canceled under subitem (BB), the permittee shall, within ninety (90) days following receipt of the cancellation notice by the permittee and the commissioner, complete the following:
 - (aa) Obtain alternate financial assurance under this rule.
 - (bb) Place evidence of that alternate financial assurance in the facility operating record.
 - (cc) Notify the commissioner.
 - (DD) If the permittee fails to provide alternate financial assurance within the ninety (90) day period under subitem (CC), the guarantor shall complete the following:
 - (aa) Provide alternate assurance within one hundred twenty (120) days following the guarantor's notice of cancellation.

(bb) Place evidence of the alternate assurance in the facility operating record.

(cc) Notify the commissioner.

(C) The permittee shall complete the following record keeping and reporting requirements:

(i) The permittee shall place a certified copy of the guarantee along with the items required under subdivision (6)(B)(iii) into the facility's operating record:

(AA) before the initial receipt of waste or at the time of the next required local government financial test annual submittal, whichever is later, in the case of closure and post-closure care; or

(BB) not later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(ii) The permittee is no longer required to maintain the items specified in this clause when the permittee:

(AA) substitutes alternate financial assurance as specified in this rule; or

(BB) is released from the requirements of this rule in accordance with section 6 or 11 of this rule.

(iii) If a local government guarantor no longer meets the requirements of subdivision (6), the permittee shall, within ninety (90) days, complete the following:

(AA) Obtain alternative assurance.

(BB) Place evidence of the alternate assurance in the facility operating record.

(CC) Notify the commissioner.

If the permittee fails to obtain alternate financial assurance within the ninety (90) day period, the guarantor shall provide that alternate assurance within the next thirty (30) days.

(b) Financial responsibility closure cost estimate requirements must be as follows:

(1) For purposes of establishing financial responsibility, the permittee shall have a detailed written estimate of the cost of closing the facility based on the following:

(A) The closure costs derived under:

(i) 329 IAC 10-22-2(c);

(ii) 329 IAC 10-30-4(b); or

(iii) 329 IAC 10-37-4(b).

(B) One (1) of the closure cost estimating standards under subdivision (3).

(2) As used in this section, "establishment of financial responsibility" means submission of financial responsibility to the commissioner in the form of one (1) of the options under subsection (a).

(3) The permittee shall use one (1) of the following closure cost estimating standards:

(A) The entire solid waste land disposal facility closure standard is an amount that equals the estimated total cost of closing the entire solid waste land disposal facility, less an amount representing portions of the solid waste land disposal

facility that have been certified for partial closure in accordance with:

- (i) 329 IAC 10-22-3;
- (ii) 329 IAC 10-30-5; or
- (iii) 329 IAC 10-37-5.

(B) The incremental closure standard is an amount that, for any year of operation, equals the total cost of closing the portion of the solid waste land disposal facility dedicated to the current year of solid waste land disposal facility operation, plus all closure amounts from all other partially or completely filled portions of the solid waste land disposal facility from prior years of operation that have not yet been certified for partial closure in accordance with:

- (i) 329 IAC 10-22-3;
- (ii) 329 IAC 10-30-5; or
- (iii) 329 IAC 10-37-5.

(c) Until final closure of the solid waste land disposal facility is certified, the permittee shall annually review and submit to the commissioner the financial closure estimate derived under this section annually not later than June 15. The submittal must also include a copy of the ~~final~~ **existing** contour map of the solid waste land disposal facility that delineates the boundaries of all areas into which waste has been placed as of the annual review and certified by a registered professional engineer or registered land surveyor. In addition, as part of the annual review, the permittee shall revise the closure estimate as follows:

(1) For inflation, using an inflation factor derived from the annual implicit price deflator for gross national product as published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year as follows:

(A) The first revision is made by multiplying the original closure cost estimate by the inflation factor. The result is the revised closure cost estimate.

(B) Subsequent revisions are made by multiplying the latest revised closure cost estimate by the latest inflation factor.

(2) For changes in the closure plan, whenever the changes increase the cost of closure.

(d) The permittee may revise the closure cost estimate downward whenever a change in the closure plan decreases the cost of closure or whenever portions of the solid waste land disposal facility have been certified for partial closure under:

- (1) 329 IAC 10-22-3;
- (2) 329 IAC 10-30-5; or
- (3) 329 IAC 10-37-5.

(Solid Waste Management Board; 329 IAC 10-39-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1919; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2817; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2228; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3866; errata filed Sep 8, 1999, 11:38 a.m.: 23 IR 27; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1864, eff Apr 1, 2004; filed Jul 10, 2007, 2:26 p.m.: 20070808-IR-329050167FRA)

SECTION 4. 329 IAC 10-39-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-3 Post-closure; financial responsibility

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 3. (a) The permittee shall establish financial responsibility for post-closure care for all the permitted acreage of the solid waste land disposal facility before waste placement, except as provided by subsection (b). The permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) The permittee shall establish a trust agreement ~~on~~ **as follows:**

~~(i) forms provided by the commissioner; or~~

~~(ii) other forms approved by the commissioner.~~

(i) Make the wording of the trust agreement identical to the wording specified in section 12(a) of this rule, with the exception that the term "post-closure" is substituted for the term "closure".

(ii) Accompany the trust agreement with a formal certification of acknowledgment as specified in section 12(b) and 12(c) of this rule.

(iii) Submit an original signed copy and a duplicate of the trust agreement to the commissioner.

(B) All trust agreements must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(2) The surety bond option, including the following:

(A) The permittee shall establish a surety bond ~~on~~ **as follows:**

~~(i) forms provided by the commissioner; or~~

~~(ii) other forms approved by the commissioner.~~

(i) Choose from either of the following types of surety bonds:

(AA) A financial guarantee surety bond.

(BB) A performance surety bond.

(ii) Make the wording of the surety bond identical to the wording specified in the following:

(AA) Section 13 of this rule for a financial guarantee surety bond, with the exception that term "post-closure" is substituted for the term "closure".

(BB) Section 14 of this rule for a performance surety bond, with the exception that term "post-closure" is substituted for the term "closure".

(iii) Submit an original signed copy and a duplicate of the surety bond to the commissioner.

(B) All surety bonds must conform to the requirements detailed in section 2(a)(2)(B) through 2(a)(2)(E) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(3) The letter-of-credit option, including the following:

(A) The permittee shall establish a letter-of-credit ~~on~~ **as follows:**

~~(i) forms provided by the commissioner; or~~

~~(ii) other forms approved by the commissioner.~~

(i) Make the wording of the letter-of-credit identical to the wording specified in section 15 of this rule, with the exception that the term

“post-closure” is substituted for the term “closure”.

(ii) Submit an original signed copy and a duplicate of the letter-of-credit to the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(4) The insurance option, including the following:

(A) The permittee shall provide evidence of insurance ~~on~~ **as follows:**

~~(i) forms provided by the commissioner; or~~

~~(ii) other forms approved by the commissioner.~~

(i) Make the wording of the certificate of closure insurance identical to the wording specified in section 15 of this rule, with the exception that the term “post-closure” is substituted for the term “closure”.

(ii) Submit a certificate of closure insurance to the commissioner.

(B) All insurance must conform to the requirements detailed in section 2(a)(4)(B) and 2(a)(4)(C) of this rule, with the exception that the term "post-closure" be substituted for the term "closure".

(5) The financial test for restricted waste sites option, including the following:

(A) This financial test is only available for restricted waste sites: **that are permitted to accept restricted waste criteria Type I, II, and III.**

(B) If a permittee meets the criteria set forth in section 2(a)(5)(B) through 2(a)(5)(D) of this rule, the permittee shall be deemed to have established financial responsibility.

(6) The local government financial test option, including the following:

(A) This financial test is only available for permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If a permittee meets the criteria set forth in section 2(a)(6)(B) and 2(a)(6)(C) of this rule, the permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the permittee fails to meet the financial test, the permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the permittee does not meet the requirements of this subdivision. The permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(7) The local government guarantee option. If the local government guarantor and the permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the permittee shall be deemed to have established financial responsibility.

(b) The permittee shall choose a financial responsibility mechanism, as provided in

subsection (a), that guarantees funds will be available to meet the post-closure requirements of the solid waste land disposal facility, including the following:

(1) As applicable, funding must equal the amount determined under:

(A) 329 IAC 10-23-3(c)(5) and 329 IAC 10-23-3(c)(6);

(B) 329 IAC 10-31-3(b)(4); or

(C) 329 IAC 10-38-3(b)(4).

(2) Except for the trust fund mechanism, the permittee may completely fund the post-closure care amount, as determined under subdivision (1), based on the following formula and before the placement of any waste in the permitted area that is certified to receive waste:

$$\left[\left(\frac{CA + TR_A}{TP_A} \times PC_{(o)} \right) + PC_{(f)} \right] \times C = PCF$$

Where: CA = Total of existing acres certified to receive waste and acres that received waste previously.

TP_A = Total permitted acres.

TR_A = Total projected acres that will be certified to receive waste within the current annual update year, which is June 15 to June 15.

PC_(f) = Fixed post-closure costs.

PC_(o) = All other post-closure costs but fixed post-closure costs.

C = Contingencies, which equals 1.25.

PCF = Post-closure funding.

Fixed costs include semiannual inspections and reports, access control and benchmark maintenance, ground water monitoring and well maintenance, and methane gas monitoring and maintenance.

(3) For only the trust fund mechanism, funding may also be accomplished by making annual payments equal to the amount determined by the formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

Where: CE = The current total post-closure cost estimate as determined by subdivision (1).

CV = The current value of the trust fund.

Y = The number of years in the term of the original permit, which is five (5) years or less, or over the remaining life of the solid waste land disposal facility, whichever is shorter.

Annual funding must be accomplished not later than June 15 of each year.

(c) The permittee shall submit an annual update for the amount calculated under subsection (b) for inflation and for changes in the post-closure plan ~~which~~ **that** increase the costs of post-closure, not later than June 15 of each year to the commissioner ~~regarding post-closure financial assurance during the active life of the landfill and until final closure~~ **post-closure certification is deemed adequate.**

(1) During the active life of the facility, the permittee shall adjust the post-closure cost estimate for inflation prior to June 15 of each year. The adjustment for inflation

may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business, specified as follows:

(A) The first adjustment is made by multiplying the post-closure cost estimate as specified in subsection (b) by the inflation factor. The result is the adjusted post-closure cost estimate.

(B) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(2) During the active life of the facility, the permittee shall revise the post-closure cost estimate within thirty (30) days after the commissioner has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in subdivision (1).

(3) For permittees using the financial test or guarantee, the post-closure care cost estimate must be updated for inflation no later than thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the commissioner, not later than June 15 of each year.

(d) If the formula in subsection (b)(2) is used, the permittee shall itemize separately both the fixed costs and all other costs. (*Solid Waste Management Board; 329 IAC 10-39-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1922; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2235; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3871; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1870, eff Apr 1, 2004; filed Jul 10, 2007, 2:26 p.m.: 20070808-IR-329050167FRA*)

SECTION 5. 329 IAC 10-39-10 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-10 Financial assurance for corrective action for municipal solid waste landfills

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 10. (a) ~~The owner, operator, or~~ **If the** permittee of each MSWLF is required to undertake a corrective action program for ground water impacts, **the permittee** shall establish financial assurance for the most recent corrective action program. ~~The owner, operator, or~~ permittee shall choose from the following options:

(1) The trust fund option, including the following:

(A) ~~The owner, operator, or~~ permittee shall demonstrate financial assurance for corrective action by obtaining a trust fund ~~on forms provided by the commissioner or in such other form as approved by the commissioner.~~ **as follows:**

(i) **Make the wording of the trust agreement identical to the wording specified in section 12(a) of this rule, with the exception that the term “corrective action” is substituted for the term “closure”.**

(ii) **Accompany the trust agreement with a formal certification of**

acknowledgment as specified in sections 12(b) and 12(c) of this rule.

(iii) Submit an original signed copy and a duplicate of the trust agreement to the commissioner.

(B) All trust funds must conform to the requirements detailed in section 2(a)(1)(B) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(2) The **performance** surety bond option, including the following:

(A) The ~~owner, operator, or~~ permittee shall demonstrate financial assurance for corrective action by obtaining a **performance** surety bond ~~on forms provided by the commissioner or in such other form as approved by the commissioner.~~ **as follows:**

(i) Make the wording of the performance surety bond identical to the wording specified in section 14 of this rule, with the exception that term "corrective action" is substituted for the term "closure".

(ii) Submit an original signed copy and a duplicate of the performance surety bond to the commissioner.

(B) All surety bonds must conform to the requirements detailed in section 2(a)(2)(B) through 2(a)(2)(E) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(3) The letter-of-credit option, including the following:

(A) The ~~owner, operator, or~~ permittee shall demonstrate financial assurance for corrective action by obtaining a letter-of-credit ~~on forms provided by the commissioner or in such other form as approved by the commissioner.~~ **as follows:**

(i) Make the wording of the letter-of-credit identical to the wording specified in section 15 of this rule, with the exception that the term "corrective action" is substituted for the term "closure".

(ii) Submit an original signed copy and a duplicate of the letter-of-credit to the commissioner.

(B) All letters of credit must conform to the requirements detailed in section 2(a)(3)(B) through 2(a)(3)(D) of this rule, with the exception that the term "corrective action" be substituted for the term "closure".

(4) The local government financial test option, including the following:

(A) This financial test is only available for ~~owners, operators, or~~ permittees that are local governments. As used in this subdivision, "local government" means a county, municipality, township, or solid waste management district.

(B) If ~~an owner, operator, or~~ a permittee meets the criteria set forth in section 2(a)(6)(B) ~~through~~ **and** 2(a)(6)(C) of this rule, the ~~owner, operator, or~~ permittee shall be deemed to have established financial responsibility.

(C) If, at any time, the ~~owner, operator, or~~ permittee fails to meet the financial test, the ~~owner, operator, or~~ permittee shall establish an alternate financial responsibility mechanism within one hundred twenty (120) days after the end of the fiscal year for which the financial data required by this clause shows that the ~~owner, operator, or~~ permittee no longer meets the requirements.

(D) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed in the state board of accounts' annual financial audit of the

~~owner, operator, or~~ permittee. An adverse opinion or a disclaimer of opinion is cause for disallowance. Other qualifications may be cause for disallowance if, in the opinion of the commissioner, the qualifications indicate the ~~owner, operator, or~~ permittee does not meet the requirements of this subdivision. The ~~owner, operator, or~~ permittee shall choose an alternate financial responsibility mechanism within ninety (90) days after notification of the disallowance.

(5) The local government guarantee option. If the local government guarantor and the ~~owner, operator, or~~ permittee meet the requirements of section 2(a)(7)(B) and 2(a)(7)(C) of this rule, the ~~owner, operator, or~~ permittee shall be deemed to have established financial responsibility.

(b) The ~~owner, operator, or~~ permittee of an MSWLF shall choose a financial responsibility mechanism that guarantees funds will be available to meet the corrective action requirements under 329 IAC 10-21-13. The ~~owner, operator, or~~ permittee shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with 329 IAC 10-21-13 and shall include the following, as applicable:

(1) Payments into the trust fund must be made annually by the ~~owner, operator, or~~ permittee over half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half (1/2) of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

Where: RB = the most recent estimate of the required trust fund balance for corrective action (that is, the total costs that will be incurred during the second half of the corrective action period)

CV = the current value of the trust fund

Y = the number of years remaining in the pay-in period

The initial payment into the trust fund must be made no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(2) The surety bond must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(3) The letter-of-credit must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(4) The local government financial test must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(5) The local government guarantee must be effective no later than one hundred twenty (120) days after the corrective action remedy has been selected in accordance with 329 IAC 10-21-13.

(c) ~~An owner, operator, or~~ A permittee of an MSWLF required to undertake a corrective action program for ground water impacts shall have a detailed written estimate, in current dollars,

of the cost of hiring a third party to perform the corrective action in accordance with the program required under 329 IAC 10-21-13. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The ~~owner, operator, or~~ permittee shall notify the commissioner that the estimate has been placed in the operating record. The ~~owner, operator, or~~ permittee shall do the following:

(1) Annually adjust the estimate for inflation until the corrective action program is completed in accordance with 329 IAC 10-21-13.

(2) Increase the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if changes in the corrective action program or MSWLF conditions increase the maximum costs of corrective action.

The ~~owner, operator, or~~ permittee may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under subsections (a) and (b) if the cost estimate exceeds the maximum remaining costs of corrective action. The ~~owner, operator, or~~ permittee shall notify the commissioner that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record. (*Solid Waste Management Board; 329 IAC 10-39-10; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1925; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2236; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3874; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1872, eff Apr 1, 2004*)

SECTION 6. 329 IAC 10-39-11 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-39-11 Release of financial responsibility obligations

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-18; IC 13-20; IC 36-9-30

Sec. 11. As part of the ~~acknowledgement~~ **acknowledgment** of corrective action, the commissioner shall notify the ~~owner, operator, or~~ permittee that the ~~owner, operator, or~~ permittee is no longer required to maintain financial responsibility under ~~329 IAC 10-39-10~~ **section 10 of this rule** for corrective action once the requirements for corrective action have been fulfilled. (*Solid Waste Management Board; 329 IAC 10-39-11; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1926; filed Feb 26, 1999, 5:45 p.m.: 22 IR 2238*)

SECTION 7. 329 IAC 10-39-12 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-12 Wording of instrument; trust agreement

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 12. (a) A trust agreement for a trust fund, as specified in sections 2(a)(1)(A), 3(a)(1)(A), and 10(a)(1)(A) of this rule, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Indiana Permit #

Trust Agreement, the "Agreement", entered into as of [date] by and between [name of the permittee], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the Indiana Department of Environmental Management, (IDEM), an agency of the State of Indiana, has established certain rules applicable to the Grantor, requiring that a permittee of a solid waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the permittee who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified under Schedule A [on Schedule A, for each facility list the Indiana permit number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by the Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of the IDEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described under Schedule B attached hereto [on Schedule B, for each facility list type of financial assurance mechanism used, mechanism # and issuance date, issue company and its address]. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall neither be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the IDEM.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make

payments from the Fund as the IDEM commissioner shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IDEM commissioner from the Fund for closure and post-closure expenditures in such amounts as the IDEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IDEM commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims except that:

- (a) securities or other obligations of the Grantor, or any other permittee of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government;
- (b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein; and
- (b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates of the same issue held by the Trustee in any other fiduciary capacity, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the IDEM commissioner a statement confirming the value of the trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the IDEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the IDEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the IDEM commissioner to the Trustee shall be in writing, signed by the IDEM commissioner, or designee of the commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice of the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the IDEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the IDEM, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IDEM commissioner, by certified mail within ten (10) days following the expiration of the thirty (30) day period after the anniversary of the establishment of the trust, if no payment is received from the Grantor during that period. After the pay-in-period is completed, the Trustee shall not be required to see a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the IDEM commissioner, or by the Trustee and the IDEM commissioner if the Grantor ceases to

exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or the IDEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in the defense of the Trustee in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Indiana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 329 IAC 10-39-12.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(b) The following is an example of the certification of acknowledgment that must accompany the trust agreement for a trust fund as specified in sections 2(a)(1)(A), 3(a)(1)(A) and 10(a)(1)(A):

Form of certification of acknowledgment.

State of

County of

On this [date], before me personally came [permittee] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(c) The following is an example of the Indiana form of acknowledgment (Trust agreements notarized in Indiana must use this form of acknowledgment.):

Form of Indiana certification of acknowledgment.

ACKNOWLEDGMENT

State of

County of

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [permittee] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 20__.

State of:

County of residence:

Notary Public

Commission Expires: _____

(Solid Waste Management Board; 329 IAC 10-39-12)

SECTION 8. 329 IAC 10-39-13 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-13 Wording of instrument; financial guarantee surety bond

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-71; IC 13-20; IC 36-9-30

Sec. 13. A surety bond guaranteeing payment into a trust fund, as specified in sections 2(a)(2)(A) and 3(a)(2)(A) of this rule, must be worded as follows, except that

instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: [legal name and business address of permittee]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

Indiana permit number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:

Total penal sum of bond: \$

Surety's bond number:

We, the Principal and Surety(ies) hereto are firmly bound to the Indiana Department of Environmental Management (hereinafter IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71, to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance, including the requirements under Schedule A and Schedule B.

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the IDEM or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance as specified in 329 IAC 10-39, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the IDEM commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 10-39-13 on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]
[Corporate seal]
Corporate Surety(ies)
[Name and address]
State of incorporation:
Liability limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s) and other information in the same manner as for Surety above.]
Bond premium: \$

(Solid Waste Management Board; 329 IAC 10-39-13)

SECTION 9. 329 IAC 10-39-14 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-14 Wording of instrument; performance surety bond

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-71; IC 13-20; IC 36-9-30

Sec. 14. A surety bond guaranteeing performance of closure/post-closure, as specified in sections 2(a)(2)(A), 3(a)(2)(A), and 10(a)(2)(A) of this rule, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Surety Bond

Date bond executed:

Effective date:

Principal: [legal name and business address of permittee]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]:

Indiana permit number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:

Total penal sum of bond:

Surety's bond number:

We, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Management of the State of Indiana (hereinafter IDEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself jointly and severally with the Principal,

for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the environmental management laws as defined at IC 13-11-2-71, to have a permit in order to own or operate each municipal solid waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure care plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in 329 IAC 10-39, and obtain the IDEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the IDEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the closure requirements of the facility permit, for a facility for which this bond guarantees performance of closure, Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has been found in violation of the post-closure requirements of the facility permit, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or

place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the IDEM commissioner.

Upon notification by the IDEM commissioner that the Principal has failed to provide alternate financial assurance as specified in 329 IAC 10-39, and obtain written approval of such assurance from the IDEM commissioner during the ninety (90) days following receipt by both the Principal and the IDEM commissioner of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the IDEM commissioner.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the permittee and to the IDEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the IDEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the IDEM commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the IDEM commissioner.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 10-39-14, as of the date the bond is executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
Corporate Surety(ies)
[Name and address]
State of incorporation:
Liability limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]:
[For every co-surety, provide signature(s), corporate seal, and other
information in the same manner as for surety above.]
Bond premium: \$
(Note: The corporate seal is not required by Indiana law.)
(Solid Waste Management Board; 329 IAC 10-39-14)

SECTION 10. 329 IAC 10-39-15 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-15 Wording of instrument; letter-of-credit
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-71; IC 13-20; IC 26-1-5.1; IC 36-9-30

Sec. 15. A letter-of-credit, as specified in sections 2(a)(3)(A), 3(a)(3)(A), and 10(a)(3)(A) of this rule, must be worded as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Irrevocable Standby Letter-of-Credit
Commissioner
Indiana Department of Environmental Management

Dear Sir or Madam: We hereby establish our irrevocable standby letter-of-credit no. _____ in your favor, at the request and for the account of [permittee's name and address] up to the aggregate amount of [in words] U.S. dollars \$_____, available upon presentation of:

- (1)** your sight draft, bearing reference to this letter-of-credit no. _____; and
- (2)** your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the environmental management laws as defined at IC 13-11-2-71."

This letter-of-credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both you and [permittee's name] by certified mail that we have decided not to extend this letter-of-credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit

shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by both you and [permittee's name], as shown on the signed return receipts.

Whenever this letter-of-credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [permittee's name] in accordance with your instructions.

We certify that the wording of this letter-of-credit is identical to the wording specified in 329 IAC 10-39-15 that was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "Article 5 of the Uniform Commercial Code as adopted in IC 26-1-5.1-101 through IC 26-1-5.1-117" or "the current edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce"]. *(Solid Waste Management Board; 329 IAC 10-39-15)*

SECTION 11. 329 IAC 10-39-16 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-16 Wording of instrument; certificate of insurance

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 16. A certificate of insurance, as specified in sections 2(a)(4)(A) and 3(a)(4)(A) of this rule, must be worded as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Certificate of Insurance

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: [List for each facility: Indiana permit number, name, address, and the amount of insurance for closure and/or the amount for post-closure. (These amounts for all facilities covered must total the face amount shown below.)]

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 329 IAC 10-39-2(a)(4), as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the Insurer agrees to furnish to the IDEM commissioner a duplicate original of the policy listed above including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 329 IAC 10-39-16 as the rule was constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

(Solid Waste Management Board; 329 IAC 10-39-16)

SECTION 12. 329 IAC 10-39-17 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-17 Wording of instrument; chief financial officer letter for financial test of restricted waste sites

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 17. A letter from the chief financial officer, as specified in section 2(a)(5)(C)(i) of this rule, must be worded as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to commissioner of the Indiana Department of Environmental Management]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 329 IAC 10-39-2(a)(5).

[Complete the following four (4) paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its Indiana permit number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. This firm is the permittee of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in 329 IAC 10-39-2(a)(5). The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in 329 IAC 10-39-2(a)(5),

the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert either or both, as applicable: "the direct or higher tier parent corporation of the permittee" or "owned by the same parent corporation as the parent corporation of the permittee and receiving the following value in consideration of this guarantee _____."].

3. This firm, as permittee or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 10-39-2(a)(5). The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the permittee of the following restricted waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care is not demonstrated either to IDEM a state through the financial test or any other financial assurance mechanism specified in 329 IAC 10-39. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (*) are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part I for the criteria of 329 IAC 10-39-2(a)(5)(B)(ii). Fill in Part II for the criteria of 329 IAC 10-39-2(a)(5)(B)(iii).]

Part I

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]. | \$_____ |
| *2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]. | \$_____ |
| *3. Tangible net worth. | \$_____ |
| *4. Net worth. | \$_____ |
| *5. Current assets. | \$_____ |
| *6. Current liabilities. | \$_____ |
| 7. Net working capital [line 5 minus line 6]. | \$_____ |
| *8. The sum of net income plus depreciation, depletion, and amortization. | \$_____ |
| *9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.). | \$_____ |

YES NO

10. Is line 3 at least \$10 million?

11. Is line 3 at least 6 times line 1?

12. Is line 7 at least 6 times line 1?
- *13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.
14. Is line 9 at least 6 times line 1?
15. Is line 2 divided by line 4 less than 2.0?
16. Is line 8 divided by line 2 greater than 0.1?
17. Is line 5 divided by line 6 greater than 1.5?

Part II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]. \$_____
2. Current bond rating of most recent issuance of this firm and name of rating service.
3. Date of issuance of bond.
4. Date of maturity of bond.
- *5. Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$_____
- *6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.). \$_____

YES NO

7. Is line 5 at least \$10 million?
8. Is line 5 at least 6 times line 1?
- *9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10.
10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 10-39-17 as such rule was constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(Solid Waste Management Board; 329 IAC 10-39-17)

SECTION 13. 329 IAC 10-39-18 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-39-18 Wording of instrument; local government guarantee for closure and post-closure care

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-20; IC 36-9-30

Sec. 18. A local government guarantee to a permittee, as specified in section 2(a)(7)(A)(ii) of this rule, must be worded as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee for [Closure Care, Post-Closure Care, or Corrective

Action]

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of the State of Indiana, herein referred to as guarantor. This guarantee is made on behalf of the [permittee] of [business address], which is [relationship to local government], to the Department of Environmental Management of the State of Indiana (IDEM).

Recitals

1. Guarantor meets or exceeds the local government financial test criteria specified in 329 IAC 10-39-2(a)(6) and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 10-39-2(a)(7)(C).
2. [Permittee] owns or operates the following solid waste management facility(ies) covered by this guarantee: [List for each facility: Indiana permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure, both closure and post-closure, or corrective action.]
3. "Closure plan" and "post-closure plan" as used below refer to the plans maintained as required by 329 IAC 10-22 and 329 IAC 10-23 for the closure and post-closure care of facilities as identified above.
4. For value received from [permittee], guarantor guarantees to IDEM that in the event that [permittee] fails to perform [insert "closure", "post-closure care", "closure and post-closure care", or "corrective action"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 329 IAC 10-39-2(a)(7)(B)(ii)(AA)(bb), as applicable, in the name of [permittee] in the amount of the current closure, post-closure, or corrective action cost estimates as specified in 329 IAC 10-39-2(b), 329 IAC 10-39-3(b), or 329 IAC 10-39-10(b), respectively. The guarantor shall perform or pay a third party to perform the [insert "closure", "post-closure care", "closure and post-closure care", or "corrective action"].
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the IDEM commissioner and to [permittee] that the guarantor intends to provide alternate financial assurance as specified in 329 IAC 10-39, as applicable, in the name of [permittee]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [permittee] has done so.
6. The guarantor agrees to notify the IDEM commissioner by certified mail, of a voluntary or involuntary bankruptcy proceeding under 11 U.S.C. 101 et seq., naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
7. Guarantor agrees that within thirty (30) days after being notified by the IDEM commissioner of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure care, post-closure care, or corrective action, the guarantor shall establish alternate financial assurance as specified in 329 IAC 10-39, as applicable, in the name of

[permittee] unless [permittee] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the permittee pursuant to 329 IAC 10.

9. Guarantor agrees to remain bound under this guarantee for so long as [permittee] must comply with the applicable financial assurance requirements of 329 IAC 10-39 for the above-listed facilities except as provided in paragraph 10 of this guarantee.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the IDEM commissioner and to [the permittee], provided that this guarantee may not be terminated unless and until [the permittee] obtains, and the IDEM commissioner approves, alternate closure care, post-closure care, closure and post-closure care, or corrective action coverage complying with 329 IAC 10-39 and the facility permit. Cancellation of the guarantee must not occur during the one hundred and twenty (120) days beginning on the date of the receipt of the notice of cancellation by both the permittee and the commissioner as evidenced by the return receipts.

11. Guarantor agrees that if [the permittee] fails to provide alternate financial assurance as specified in 329 IAC 10-39, as applicable, and obtain written approval of such assurance from the IDEM commissioner within ninety (90) days after a notice of cancellation by the guarantor is received by the IDEM commissioner, guarantor shall provide such alternate financial assurance in the name of [the permittee] within the next thirty (30) days.

12. Guarantor expressly waives notice of acceptance of this guarantee by the IDEM commissioner or by [the permittee]. Guarantor also expressly waives notice of amendments or modifications of the closure or post-closure plan, or both, and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 10-39-18 as such rule was constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(Solid Waste Management Board; 329 IAC 10-39-18)